Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BIG RIVER MINERALS CORPORATION, et al.,
Petitioners,

v.

MICHAEL H. HOLLAND, et al.,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

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APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed August 25, 1998]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG)
BRANCH ENERGY, INC.,)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, which Memorandum Opinion is now

ORDERED filed and made a part of the record in this action, it is hereby ORDERED that defendants' motion for reconsideration be denied.

The Clerk is further directed to forward certified copies of this Judgment Order to counsel of record herein.

DATED: Aug. 25, 1998

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed August 25, 1998]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG BRANCH)
ENERGY, INC.,BIRCHFIELD)
MINING, INC.,DAVIDSON)
MINING, INC.,and M.A.E. -)
WEST INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

MEMORANDUM OPINION

Pending before the Court is the motion of defendants for reconsideration. All memoranda being submitted, this matter is ripe for decision.

This case began when the UMWA 1992 Benefit Plan and its Trustees ("1992 Plan") filed suit against Big River Minerals Corporation and twelve related companies for failure to comply with Sections 9711 and 9712 of the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9711, 9712. Plaintiffs alleged that Defendants failed to provide health care coverage to certain disabled retirees covered by the Coal Act. Defendants asserted that those retirees did not meet the Coal Act's eligibility requirements. This Court held in its September 3, 1997, Memorandum Opinion that the disability pensioners at issue are eligible for Coal Act benefits and that Big River and other defendants are responsible for that coverage. In its Memorandum Opinion and Judgment Order of June 18, 1998, this Court held defendants are liable for per-beneficiary premiums, annual pre-funding premiums, interest, liquidated damages, attorney fees and costs, totaling $1,035,732.80, exclusive of fees and costs. The Court further held, among other things, that defendants must provide health benefits to those named disabled retirees through an individual employer plan.

Defendants have filed for reconsideration of this Court's July 18th order upon the grounds that under the recent Supreme Court decision in Eastern Enterprises v. Apfel, 66 U.S.L.W. 4566 (June 25, 1998) the Coal Act is unconstitutional as applied to two of defendant companies, Pea Ridge Iron Ore Company, Inc. and Oxide Services Corp.

Defendants further assert that this Court should reverse its decision on the eligibility of disabled pensioners and adopt the more recent district court case, Penn Allegh Coal Co. v. Holland, C. A. No. 97-121 (HHK) (July 22, 1998).

It should be noted that the defendants have failed to adequately raise the issue of constitutionality of the Coal Act in any of their substantive pleadings prior to judgment entered in June, 1998. The defendants are procedurally barred from raising this issue post judgment. United States v. Olano, 507 U.S. 725, 731 (1993) [citing Yakus v. U. S., 321 U.S. 414 [144 (1944)]. As the Court previously ruled on the issue in a prior decision, defendants are barred because they "have never raised the constitutionality of the statute in pleadings filed with the court prior to the motion for stay and have not sought to amend any prior pleading to appropriately raise such a challenge.

Yet, this Court will address the arguments of Defendants Pea Ridge and Oxide wherein defendants attempt to rely on the Supreme Court's decision in Eastern in that the Coal Act violates the Takings Clause and the Due Process Clause of the Fifth Amendment as it applies to them.

In Eastern Enterprises, the Supreme Court was confronted with a company that was assigned Combined Fund beneficiaries by the Social Security Administration pursuant to Section 9706(a)(3) of the Coal Act. That section provides for assignment of beneficiaries to companies that were signatory to National Bituminous Coal Wage Agreements ("NBCWA") prior to the effective date of the 1978 NBCWA. The plurality opinion explicitly limits its analysis to assignments made to Eastern Enterprises pursuant to Section 9706(a)(3). Eastern Enterprises, 1998 U.S. LEXIS *70 (plurality opinion); see also id. at *120 (Kennedy, J., concurring in judgment).

The present case arises under Section 9711 and 9712 of the Coal Act and not Section 9706(a)(3). The liabilities at issue in this case all relate to the UMWA 1992 Benefit Plan and not the UMWA Combined Benefit Fund as in Eastern Enterprises. Further, Defendants Birchfield Mining, Inc., Davidson Mining, Inc., and M.A.E. West Incorporated were all signatory to the National Bituminous Coal Wage Agreement of 1988. The retroactivity that concerned the plurality and Justice Kennedy in Eastern Enterprises is simply not present under these facts. This Court is of the opinion that there has not been an intervening change in the law on which the Court based its prior judgment. Accordingly, defendants' arguments must fail on that point.

Defendants seek to rely on the plurality opinion in Eastern to support the proposition that the Coal Act as applied to them violates the Takings Clause. The plurality's opinion in Eastern, however, is the opinion of four justices, not the majority, and thus is not binding on this Court. See, e.g., Powers v. Alabama Dept. of Education, 854 F.2d 1285, 1291 n. 11 (11th Cir. 1988), cert. denied, 490 U.S. 1107 (1989) ("A plurality opinion, however, is not binding precedent. . . ."). See also King v. Palmer, 950 F.2d 771, 783 (D.C. Cir. 1991) (fragmented Supreme Court decision not controlling authority, where plurality of four justices disagreed with reasoning of concurring fifth justice). To the contrary, the only legal reasoning in Eastern that did command a majority of the Court (Justice Kennedy, concurring in the judgment and dissenting in part, and Justices Breyer, Stevens, Souter, and Ginsburg in dissent) and that, therefore, governs in the lower federal courts, is that the Takings Clause simply has no application to economic regulatory measures such as the Coal Act. See 118 S. Ct. at

2154 (Kennedy, J.) ("To call this sort of governmental action a taking as a matter of constitutional interpretation is both imprecise and, with all due respect, unwise"). See also 118 S. Ct. at 2161 (Breyer, J.) ("I agree with Justice Kennedy that the plurality views this case through the wrong legal lens. The Constitution's Takings Clause does not apply.").

Defendants also now assert that the Coal Act violates the Due Process Clause. Although five justices in Eastern concluded that the Coal Act should be analyzed under the Due Process Clause, only one of those justices (Justice Kennedy) concluded that the Coal Act violates the Due Process Clause when applied to Petitioner Eastern Enterprises. The four dissenters disagreed with Justice Kennedy and concluded that the Coal Act passes constitutional muster under the Due Process Clause, even when applied to a pre-1974 signatory operator like Eastern. See, e.g., 118 S. Ct. at 2161-68 (Breyer, J.) and 2160-61 (Stevens, J.) (noting that pre-1974 signatories such as Eastern contributed to miners' expectation of receiving lifetime health benefits, even though collective bargaining agreements did not make explicit reference to lifetime benefits until 1974).

Defendants further argue that if the Coal Act is unconstitutional as applied, to Eastern, it must also be unconstitutional as applied to Defendants Pea Ridge and Oxide. The Court disagrees. Pea Ridge and Oxide are liable under Section 9712(d)(4) of the Coal Act because they are "related persons" to Birchfield, Davidson, and M.A.E. West Inc., companies that signed collective bargaining agreements with the UMWA in 1988. The Supreme Court in Eastern did not consider the provisions of the Coal Act pertaining to related persons. No court has ever questioned the validity of

those provisions. In addition, both Pea Ridge and Oxide, by their own admission, became members of the controlled group of companies including the signatory operators long after the signatories had signed collective bargaining agreements referring to lifetime health care for the retirees of signatory employers. Unlike Eastern Enterprises, which left the coal industry in 1965, did not sign the 1974 or any subsequent NBCWA, and was not a "related person" to any post-1974 signatory when the Coal Act was passed in 1992, the companies here were under common control with companies that expressly promised lifetime health benefits to retired coal miners and their dependents. Eastern is, therefore, readily distinguishable from this case.

Also, control group liability has long been a central tenet underlying the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001 et seq.

Defendants second argument rests on the holding in Penn Allegh. In 1997, the Court held that defendants are responsible under Sections 9711 and 9712 of the Coal Act for the health coverage of disability pensioners that retired from certain of the defendant companies. These retirees worked for Defendants Birchfield Mining, Inc., Davidson Mining, Inc. and M.A.E.-West Inc., were injured in mine accidents while in the employ of those companies, and retired with disability pensions from the UMWA 1974 Pension Plan as a result.

The Coal Act provides that "eligible beneficiary" means individuals who

> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,
>
> . . .In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

26 U.S.C. S 9712(b)(2). Essentially, defendants challenged the eligibility of their disabled retirees on the grounds that the retirees, while totally and permanently disabled on or before September 30, 1994, did not submit their pension applications before September 30, 1994. Defendants argue that in order to be considered "retired," an individual must have applied for a pension. Defendants further argued that the Coal Act does not cover disability pensioners who were not disabled prior to February 1, 1993, or, in the alternative, does not cover disability retirees at all because they are not required to meet the "age and service" requirements applicable to regular service pensions. This Court rejected defendants, challenge and upheld the 1992 Plan Trustees' interpretation of Section 9712(b)(2) of the Coal Act, under which retirees are eligible

for benefits if they became totally and permanently disabled in a mine accident on or before September 30, 1994, even if they did not submit pension applications until after that date, as reasonable and consistent with the intent of Congress in passing the statute.

Similar facts were present in the Penn Allegh case. That case was initiated by Penn Allegh, which filed suit after the UMWA Health and Retirement Funds referred a disability pensioner to the company for health care coverage pursuant to Section 9711 of the Coal Act. This retiree had become disabled in a mine accident before September 30, 1994, while working for Penn Allegh, but did not file his pension application until after that date. Contrary to this Court's decision, Judge Kennedy ruled in favor of Penn Allegh. The court held that, because disability retirees do not have to meet the age and service requirements for a regular pension, they are ineligible for health benefits under the Coal Act unless they were already receiving benefits from their employers' Individual Employer Health Plans as of February 1, 1993. This decision is based on the language in Sections 9711(b)(1) and 9712(b)(2)(A), which refers to "age and service. . .as of February 1, 1993" as a factor in determining eligibility under the Coal Act. 26 U.S.C. §§ 9711(b)(1), 9712(b)(2)(A). As this Court recognized, however, disability pensioners have met all of the applicable age and service requirements once they are injured in a mine accident because they may begin receiving a disability pension at any age and regardless of the length of their service. The interpretation advanced by the Penn Allegh court, if allowed to stand, would result in the affected retiree losing health care coverage for himself and his dependents under the Coal Act simply because eligibility for a disability pension does not depend on attainment of a

specific age or duration of service. If adopted in other jurisdictions, the ruling would threaten the health care long promised to numerous disabled retirees. The Court is of the opinion that this result is utterly contrary to the intent of Congress and should not be extended to this case.

Accordingly, for the reasons set forth hereinabove, it is hereby ORDERED that defendants' motion for reconsideration be denied.

The Clerk is directed to send copies of this Memorandum Opinion to counsel of record herein.

DATED: Aug. 25, 1998

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed June 18, 1998]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG)
BRANCH ENERGY, INC.,)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

MEMORANDUM OPINION

Pending before the Court are the cross-motions for summary judgment filed by the parties herein. Having

carefully reviewed the parties' motions, memorandum and exhibits, the Court is now prepared to render its ruling.

Plaintiffs, Trustees of the United Mine Workers of America 1992 Benefit Plan, bring this cause of action requesting the Court to find that the defendant coal companies owe plaintiffs for beneficiary premiums and for entry of an order requiring defendants to provide health benefits coverage to their retirees through an individual employer plan pursuant to the Coal Industry Retiree Health Benefit Act of 1992. 26 U.S.C. § 9701 et seq.

Defendants argue that certain beneficiaries are not age and service qualified to receive benefits and further seek a preliminary injunction.

The Court begins its analysis by noting that the United States Supreme Court has held that:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to

> make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

Courts must be careful, however, to insure that in assessing a motion for summary judgment, all justifiable inferences are drawn in favor of the nonmoving party for "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. . . ." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Moreover, courts "must perform a dual inquiry into the genuineness and materiality of any purported factual issues." Ross v. Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985)(emphasis added). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248. While "[g]enuineness means that the evidence must create fair doubt; wholly speculative assertions will not suffice." Ross, 759 F.2d at 364; accord Goldberg v. B. Green & Co. Inc., 836 F.2d 845, 848 (4th Cir. 1988); Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987); Ash v. United Parcel Service Inc., 800 F.2d 409, 411-12 (4th Cir. 1986).

After thoroughly reviewing the record in light of these principles:

> [T]he judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the [nonmovant] on the evidence presented. The mere existence of a scintilla of evidence in support of the [nonmovant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant].

Anderson, 477 U.S. at 252.

Where such analysis reveals the absence of any genuine issues of material fact, the nonmoving party should be cognizant of "the affirmative obligation of the trial judge to prevent factually unsupported claims and [sic] defenses' from proceeding to trial." Felty, 818 F.2d at 1128 (quoting Celotex Corp., 477 U.S. at 323-24).

The Court has already found that Defendants Birchfield, Davidson and M.A.E. West were all signatory to the National Bituminous Coal Wage Agreement of 1988 and, therefore, are last signatory operators as defined in the Coal Act, 26 U.S.C. § 9701 *et seq.* Holland v. Big River Minerals Corp., C.A. 2:97-0138 at p. 8 (S.D. W. Va. June 16, 1997). Additionally, this Court found that Defendants Big River Minerals Corp., Big River Coal Corp., Pea Ridge Iron Ore Company, Inc., Oxide Services Corp., Castle Rock Mining Company, Long Branch Energy Corp., Pinnacle Rock Coal Corp., and Panther Branch Coal Co., d/b/a Long Branch Energy, Inc., were in a controlled group of companies with Birchfield, Davidson and M.A.E. West as of July 20, 1992, and thus, are related persons to Birchfield, Davidson and

M.A.B. West as defined in Section 9701(c)(2)(A) of the Coal Act. Further, this Court held that the last signatory operators and related persons are jointly and severally liable for obligations under the Coal Act.

The 1992 Plan has determined the following beneficiaries to be eligible for benefits from the 1992 Plan and attributed them to Birchfield: Samuel G. Sadler, Julie Sadler, Samantha Sadler, Asher Sadler, Maynard Wallace, Mary M. Maynard, Wallace Maynard, Jr., Richard Craddock, Patty A. Craddock, Richard L. Craddock, II, Jack E. Beckett, Nichole R. Craddock, Harold D. Williams, Lena K. Williams, Jennifer L. Williams, Michael D. Williams, William C. Hurd, Jr., Jackie L. Gautier, Deborah Gautier, Olga Gautier, Brandon Gautier, Dewey A. Harvey, Aretta F. Harvey, Thurmond H. Morton, Brenda Morton and Debra K. Pierce.

The 1992 Plan has determined the following beneficiaries to be eligible for benefits from the 1992 Plan and attributed them to Davidson: Joe R. Wilcoxen, Bonnie Wilcoxen, Floyd H. Buchanan, Toni L. Buchanan, Phoebe C. Buchanan, Henry L. Buchanan, Katherine E. Buchanan, Harold W. Whaples, Sue A. Whaples, Amy L. Whaples, Jimhazel Milan, Zada Milam, David M. McKinney, Sharon McKinney, Kasey McKinney, Krista McKinney, Albert A. Murdock, Martin R. Gunnoe, Roger L. Hatten, Vickie Hatten, Stacy Hatten, Lisa Hatten, Gary C. Conley, Pamela S. Conley, Craig A. Conley, Shelly A. Conley, Lydge L. Burns, Letha J. Burns, Randall D. Bragg, Vanessa Bragg, Randall D. Bragg, Jr., Jerry D. Rawls and Jewell C. Rawls.

The 1992 Plan has determined the following beneficiaries to be eligible for benefits from the 1992 Plan and

attributed them to Davidson: Robert Dingess, Jerry L. Cox, Melba R. Cox, Richard E. Casto, Clarice A. Casto, Henry C. Halstead, Juanita Halstead, Andrea D. Morgan, George D. Vannatter, Ramona F. Vannatter, George D. Vannatter, II, Brandy L. Vannatter, Christy D. Vannatter, Charles Thomas, Marie Thomas, Michael D. Williams, Sherry Williams, Michael Williams, III, Brenda L. Asbury and Robert J. Asbury.

Section 9711(a) of the Coal Act explicitly requires that former employers maintaining retiree health plans on February 1, 1993, pursuant to a current or past National Bituminous Coal Wage Agreement continue to maintain those plans for as long as the last signatory operator, and any related person, remains in business. 26 U.S.C. § 9711(a) Similarly section 9711(b) of the Coal Act requires former employers to maintain an individual employer plan for persons that become eligible for benefits prior to October 1, 1994, but were not receiving benefits as of February 1, 1993. 26 U.S.C. § 9711(b).

As of February 25, 1998, defendants were not providing health care benefits to the following Birchfield, Davidson and M.A.E. West retirees and their eligible dependents: Samuel G. Sadler, Julie Sadler, Asher Sadler, Wallace Maynard, Mary M. Maynard, Wallace Maynard, Jr., Richard L. Craddock, Patty A. Craddock, Jack E. Beckett, Nichole R. Craddock, Harold D. Williams, Lena K. Williams, Jennifer L. Williams, Michael D. Williams, Jackie L. Gautier, Deborah Gautier, Brandon Gautier, Thurmond H. Morton, Brenda Morton, David M. McKinney, Sharon McKinney, Kasey McKinney, Krista McKinney, Albert A. Murdock, Gary C. Conley, Pamela S. Conley, Shelly A.

Conley, Lydge L. Burns, Letha J. Burns, Randall D. Bragg, Vanessa Bragg and Randall D. Bragg, Jr., George D. Vannatter, Ramona F. Vannatter, George D. Vannatter, II, Brandy L. Vannatter, Christy D. Vannatter, Michael D. Williams, Sherry Williams, and Michael Williams, III. To insure that Birchfield, Davidson, and M.A.E. West's pensioners and their dependents would not be harmed while the Trustees brought this action, the 1992 Plan began providing health benefits to Birchfield, Davidson, and M.A.E. West's pensioners and their dependents. Since Section 9711(a) of the Coal Act places the burden of providing health care coverage on the defendants, not the 1992 Plan, failure by the defendants to provide such a plan constitutes injury to the 1992 Plan. Accordingly, the Court is of the opinion that the defendants must provide an individual employer health plan to cover Birchfield, Davidson and M.A.E. West's pensioners and their eligible dependents.

As a result of the defendants' failure to provide health benefits to their retirees as required by Section 9711 of the Coal Act, the 1992 Plan provided those benefits directly to the beneficiaries and, as a result of the 1992 Plan, is entitled to be reimbursed for the cost of providing those benefits.

As signatories to the 1988 National Bituminous Coal Wage Agreement, Birchfield, Davidson, and M.A.E. West are "signatory operators" under Section 9701(c)(1) of the Coal Act, 26 U.S.C. 9701(c)(1). Furthermore as noted above, this Court previously held that Birchfield, Davidson and M.A.E. West are "last signatory operators" as defined in Section 9701(c)(4) of the Coal Act, 26. U.S.C. § 9701(c)(4), because they are signatory operators which were the most recent coal industry employer of certain retirees.

Further, each 1988 last signatory operator is liable for the payment of annual pre-funding premiums for each "eligible beneficiary." 26 U.S.C. § 9712(d)(1)(A) and (B). Defendants must submit accurate remittance advice forms within fourteen (14) days of the entry of this Order.

Section 9712(d)(3) of the Coal Act, 26 U.S.C. § 9712(d)(3), makes each last signatory operator liable for the payment of a monthly per-beneficiary premium for each eligible beneficiary described in Section 9712(b)(2) of the Coal Act, 26 U.S.C. § 9712(b)(2), who is attributable to the 1988 last signatory operator and who is receiving benefits under the UMWA 1992 Benefit Plan. Section 9712(d)(3) of the Coal Act, 26 U.S.C. § 9712(d)(3), states that "[a]ny last signatory operator who is not a 1988 last signatory operator shall pay the monthly per-beneficiary premium under [Section 9712(d)(1)(B)] for each eligible beneficiary. . .attributable to that operator."

The Court is of the opinion that this provision of the Coal Act requires Birchfield, Davidson and M.A.E. West to pay the monthly per-beneficiary premiums for the beneficiaries attributed to them. Further, the Trustees have attributed beneficiaries to Birchfield, Davidson and M.A.E. West.

Pursuant to 26 U.S.C. § 9712(d)(1)(C), defendants were required to post security for the payment of benefits to their retirees. Because of defendants' failure to report the exact number of eligible beneficiaries attributable to them, defendants posted security in a deficient amount. The defendants were notified of this failure by letter on April 8, 1998, and apparently failed to properly post the security

required by the Coal Act. Accordingly, the defendants must submit a remittance advice form disclosing the number of beneficiaries in their individual employer plan and the number of beneficiaries in the 1992 Plan within fourteen (14) days of entry of this order.

Further, as a result of the defendants' failure to post the required security, the defendants are required to pay additional pre-funding premiums. See 26 U.S.C. § 9712(d)(1)(C); Article XI of the United Mine Workers of America 1992 Benefit Plan Agreement and Declaration of Trust. The Trustees have set the rate for this additional pre-funding premium as ten times the annual pre-funding premium. See UMWA 1992 Benefit Plan Security Provisions Master Resolution.

Section 9721 of the Coal Act, 26 U.S.C. § 9721, directs that Section 4301, 29 U.S.C. § 1451, of ERISA shall apply to any claim arising out of an obligation to pay any amount required to be paid by the Coal Act in the same manner as any claim arising out of an obligation to pay withdrawal liability. In turn, Section 4301(b) of ERISA, 29 U.S.C. § 1451(b), directs that a failure by an employer to pay withdrawal liability shall be treated in the same manner as a delinquent contribution. Thus, delinquent obligations imposed by the Coal Act are treated as delinquent contributions under ERISA.

Section 515 and 502(g)(2) of ERISA, 29 U.S.C. §§ 1145 and 1132(g)(2), concern actions to recover delinquent contributions and are, therefore, applicable to this action. Section 515 of ERISA, 29 U.S.C. § 1145, imposes an obligation upon an employer to make contributions to a multi-

employer plan in accordance with the employer's obligations under the terms of a plan or a collectively bargained agreement.

Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), lists the recovery that a court shall award in actions brought by fiduciaries under Section 515 to collect delinquent contributions. Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), requires this Court to award interest, liquidated damages, reasonable attorney's fees and costs to the Trustees in addition to the amount of the unpaid annual pre-funding and monthly per-beneficiary premiums.

Section 502(g)(2)(E) of ERISA, 29 U.S.C. § 1132(g)(2)(E) provides that interest on the unpaid premiums is to be determined by using the rate provided under thespian, or, if none, the rate prescribed under Section 6621 of the Internal Revenue Code ("IRC"). 26 U.S.C. § 6621. In this case, since the UMWA 1992 Benefit Plan's plan documents provide no separate interest rates, IRC Section 6621 is controlling.

The UMWA 1992 Benefit Plan's plan documents do, however, contain a provision for liquidated damages. ERISA Section 502(g)(2)(C) provides that the court shall award the greater of (i) the interest on the unpaid premiums or (ii) liquidated damages provided for under the plan in an amount not in excess of 20% of the unpaid premiums. 29 U.S.C. § 1132(g)(2)(C)(i). Article XI(7) of the UMWA 1992 Benefit Plan's Trust Document states that 1988 Agreement Operators, such as Birchfield, Davidson and M.A.E. West, who fail to comply with any financing requirements "shall be assessed liquidated damages in an amount equal to the greater of

twenty percent (20%) of the amount owed or the amount of interest charged."

Pursuant to the above reasoning and since no genuine issue of fact exists, the Court finds that the Trustees are entitled to an award for Birchfield, Davidson and M.A.E. West's monthly per-beneficiary premiums to the UMWA 1992 Benefit Plan, interest; additional pre-funding premiums, interest; liquidated damages, reasonable attorney fees and costs pursuant to Section 9721 of the Coal Act, 26 U.S.C. § 9721, and Sections 502(g)(2), 515 and 4301(b) of ERISA, 29 U.S.C. §§ 1132(g)(2), 1145 and 1451(b).

Accordingly, the Court must enter judgment for the Trustees and against the defendants for per-beneficiary premiums, annual pre-funding premiums, interest, liquidated damages, attorney's fees and costs, issue an order requiring defendants to pay all future premiums to the 1992 Plan as they come due; issue an order requiring defendants to directly provide health benefits to Samuel G. Sadler, Julie Sadler, Asher Sadler, Wallace Maynard, Mary M. Maynard, Wallace Maynard, Jr., Richard L. Craddock, Patty A. Craddock, Jack E. Beckett, Nichole R. Craddock, Harold D. Williams, Lena K. Williams, Jennifer L. Williams, Michael D. Williams, Jackie L. Gautier, Deborah Gautier, Brandon Gautier, Thurmond H. Morton, Brenda Morton, David M. McKinney, Sharon McKinney, Kasey McKinney, Krista McKinney, Albert A. Murdock, Gary C. Conley, Pamela S. Conley, Shelly A. Conley, Lydge L. Burns, Letha J. Burns, Randall D. Bragg, Vanessa Bragg and Randall D. Bragg, Jr., George D. Vannatter, Ramona F. Vannatter, George D. Vannatter, II, Brandy L. Vannatter, Christy D. Vannatter, Michael D. Williams, Sherry Williams, Michael Williams, III through an

individual employer plan; issue an order requiring defendants to submit remittance advice forms disclosing all of the eligible and potentially eligible beneficiaries for purposes of calculating annual pre-funding premiums and the amount of security required to be posted; and issue an order requiring defendants to post additional security.

The defendants must submit all required advice forms within fourteen days of entry of the attached Judgment Order.

The plaintiffs must submit information regarding reasonable attorney's fees and costs within fourteen days of entry of the attached Judgment Order with defendants' response thereto filed fourteen days thereafter.

The Clerk is directed to send copies of this Memorandum Opinion to counsel of record herein.

DATED: June 18, 1998

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed September 3, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION, PANTHER BRANCH COAL COMPANY, dba LONG BRANCH ENERGY, INC., BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATED,
Defendants.

and

BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATION,
Third-Party Plaintiffs,

v.

MICHAEL H. HOLLAND, DONALD E. PIERCE, JR., THOMAS F. CONNORS, and ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third-Party Defendants.

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, which Memorandum Opinion is now

ORDERED filed and made a part of the record in this action, it is hereby ORDERED that the motion for partial summary judgment of the Trustees of the 1992 Plan be granted. It is also ORDERED that the motion by defendants in opposition and for an order denying plaintiffs' motion for partial summary judgment be denied.

It is further ORDERED that judgment be entered in favor of the 1992 Plan and against defendants on all counts of defendants' counterclaim and on defendants' sixth, seventh and thirteenth defenses.

The Clerk is directed to send certified copies of this Judgment Order to counsel of record herein.

DATED: Sept. 3, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed September 3, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION, PANTHER BRANCH COAL COMPANY, dba LONG BRANCH ENERGY, INC., BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATED,
Defendants.

and

BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATION,
Third-Party Plaintiffs,

v.

MICHAEL H. HOLLAND, DONALD E. PIERCE, JR., THOMAS F. CONNORS, and ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third-Party Defendants.

MEMORANDUM OPINION

Pending before the Court is the motion for partial summary judgment filed by the plaintiffs herein, the United

Mine Workers of America 1992 Benefit Plan. At issue in this case is the determination of the 1992 Plan Trustees that disability pensioners who were permanently disabled on or before September 30, 1994, are eligible to receive benefits from the1992 Plan.

The Trustees of the United Mine Workers of America 1992 Benefit Plan (1992 Plan) filed this action against Defendants Birchfield Mining, Inc. ("Birchfield"), Davidson Mining, Inc. ("Davidson"), and M.A.E. - West Incorporated ("M.A.E. - West"), which were signatures to the National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA") but not signatory to the National Bituminous Coal Wage Agreement of 1993 ("1993 NBCWA"). Plaintiffs also joined as defendants Big River Minerals Corp. and others which are related companies or within a control group of the three signatory companies.

In their complaint, plaintiffs assert that defendants in this action are jointly and severally liable for the provision of health benefits to disability pensioners who were permanently disabled on or before September 30, 1994, and who are eligible to receive benefits from the 1992 Plan. Plaintiffs allege defendants" liability pursuant to the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 et seq. ("Coal Act").

In plaintiffs motion for partial summary judgment, they seek an initial determination as to whether these disability pensioners were properly determined to be eligible for the 1992 Plan; plaintiffs do not seek in the motion a determination as to an amount of defendants' liability.

Defendants filed an answer and counterclaim against the 1992 Plan asserting that the Trustees have impermissibly assigned the defendant signatory companies' disability retirees to the 1992 Plan in violation of the provisions of the Coal Act. Specifically, defendants have asserted the noneligibility of various beneficiaries in their sixth, seventh, and thirteenth defense in their answer. Additionally, the three former signatory companies filed a third-party complaint against the Trustees of the 1993 Plan which seeks a declaration that Sections 9711(b) and 9712(b) of the Coal Act, 26 U.S.C. § 9711(b) and 9712(b) et seq. neither require nor authorize the provision of retiree health benefits to (1) disability pensioners who are not disabled on or before February 1, 1993, and/or who failed to apply for such benefits until after September 30, 1994, and (2) to any disabled miners under any circumstances or, in the alternative, disabled miners who were disabled prior to February 1, 1993, and/or who failed to apply for such benefits until after September 30, 1994.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper:

> If the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.

The party moving for summary judgment has the burden to show initially the absence of a genuine issue concerning any material fact. Adickes v. S. H. Kress & Co., 398 U.S. 144, 159 (1970). However, once the moving party

has met its initial burden, the burden shifts to the nonmoving party to "establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 1066, 322 (1988). The nonmoving party cannot rely on its pleadings to discharge this burden, but instead must have evidence showing that there is a genuine issue for trial. Id. at 324.

In October, 1992, Congress enacted the Coal Act. The Coal Act was the product of nearly two years of intensive study and debate concerning the funding crisis threatening retiree health care in the nation's coal fields. Congress created a comprehensive funding scheme to ensure a funding base for the provision of coal industry retiree health benefits. The fundamental principle underlying the legislation is that "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility in providing the health care benefits. . ." 138 Cong. Rec. § 17603 (daily ed. Oct. 8, 1992).

The Coal Act implemented a new financing structure through three mechanisms, one of which was the creation of the 1992 Plan to provide benefits to those persons who retired before October 1, 1994, and who should be covered by individual employer plans under Section 9711, but whose employers fail to provide such coverage. 26 U.S.C. § 9712(b)(2)(B). The 1992 Plan also provides benefits to persons who, based on their age and service earned as of February 1, 1993, could have retired and received benefits from the 1950 or 1974 Trusts had those plans remained in existence, and who retired between July 20, 1992, and October 1, 1994. 26 U.S.C. § 9712(b) (2).

Under the Coal Act, the 1992 Plan is financed through two kinds of premiums, a per beneficiary premium and a prefunding premium. 26 U.S.C. § 9712(d)(1). The per beneficiary premium is assessed against operators who are assigned beneficiaries in an amount sufficient to pay for health benefits for those retirees and dependents who are receiving benefits from the 1992 Plan. 26 U.S.C. § 9712(d)(1)(B).

The prefunding premium is assessed against each "1988 Last Signatory Operator" defined generally as signatory operators which were signatory to the 1988 National Bituminous Coal Wage Agreement, 26 U.S.C. §§ 9701(c)(3), 9712(d)(1), 9712(d)(6), whether or not they actually have beneficiaries in the 1992 Plan. The prefunding premium is adjusted in part to cover the cost to the 1992 Plan of providing benefits for beneficiaries for whom no per beneficiary premiums have been paid. 26 U.S.C. § 9712(d)(1)(A). As a result, employers who are required to pay prefunding premiums must finance benefits for retirees who receive benefits from the 1992 Plan but whose former employers fail to pay the required per beneficiary premiums.

In addition, Section 9712(d)(4) broadens liability for these premiums as follows:

> (4) Joint and several liability. A 1988 last signatory operator. . . , and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

Similarly, Section 9711(c) provides that "[e]ach related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b). Additionally, successors to the last signatory operator or any related persons are also jointly and severally liable for the obligations imposed by the Coal Act. See 26 U.S.C. § 9701(c)(2)(A) and 9711(g)(1).

During a meeting of the Board of Trustees of the UMWA 1992 Benefit Plan on October 6, 1993, the Court is of the opinion that the Trustees decided that the Plan would provide health coverage to disability pensioners who became eligible as a result of disabilities occurring on or before September 30, 1994. Further review illustrates that the Trustees also concluded that disability pensioners "retired" on the date they became disabled as certified by the Social Security Administration. The Trustees had to act on these inquiries since the term"retired" is not defined by the 1992 Plan document, trust agreement, or the Coal Act.

The 1992 Plan filed this instant action to compel defendants to comply with their statutory obligations by providing the requisite health care to various disability pensioners. Defendants assert that they have no obligations to various disability pensioners who were not disabled on or before February 1993, and/or who failed to apply for such benefits until after September 30, 1994, and who are not eligible for health coverage pursuant to the Coal Act.

The fundamental principle underlying the Coal Act is that "those companies which employed the retirees in

question, and thereby benefited from their services, will be assigned responsibility for providing the health care benefits. . . ." 138 Cong. Rec. § 17603 (daily ed. Oct. 8, 1992) (statement of Senator Wallop). To effectuate this purpose, Congress designed a coordinated structure for providing benefits, under which the former employees of the retirees provide benefits directly to the retirees and finance the benefits provided by the 1992 Plan.

Congress also designed the basic eligibility for receiving the benefits provided under the statute. Again, those requirements are quite broad, reflecting the effort of Congress to ensure continued provision of health care to covered retirees. Section 971(b) of the Coal Act provides:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

26 U.S.C. § 9711(b). Section 9712(b)(2) of the Coal Act provides:

> For purposes of this section, the term "eligible beneficiary" means an individual who --
>
> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person.
>
> . . . In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

26 U.S.C. § 9712(b)(2). The Coal Act thus defines the basic eligibility criteria for benefits from individual employers plans under Section 9711, and for benefits from the 1992 Plan under Section 9712. While the Coal Act limits benefits to those who "retired" prior to October 1, 1994, the term "retired" is not defined in the statute.

In the Coal Act, Congress directed the "settlors" to create 1992 Plan, dictating that "[t]he settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees." 26 U.S.C. § 9712(a)(1). The settlors are the UMWA and the BCOA. 26 U.S.C. § 9701(b)(2). Pursuant to this directive, the settlors developed a plan of benefits and a trust agreement, which constitute the governing documents of the 1992 Plan. The settlors also appointed the 1992 Plan Trustees.

The eligibility language set forth in the Plan document tracks the language of the statute. Because the term "retired" is not defined in the Plan document or the Coal Act, the 1992 Plan Trustees were required to interpret the term in order to determine the eligibility of certain retirees. The Court is of the opinion that in order to give effect to the intent of Congress in the Coal Act, the Trustees determined that, in the case of disability pensioners, the retirees were "retired" on the date that they became disabled, as certified by the Social Security Administration. The Court agrees with the 1992 Plan determination that a different interpretation would have rendered such individuals ineligible for benefits under the Coal Act simply because they did not file a pension application before October 1, 1997, even though they had ceased performing covered work in the coal industry when they became disabled.

We must now turn our attention to the standard of review by this Court of the Trustees' determination. The relevant inquiry is whether the Trustees' determination is consistent with the Coal Act and is a reasonable exercise of the Trustees' discretion under the Plan documents.

In Firestone Tire & Rubber v. Bruch, 489 U.S. 101, 115 (1989), the Supreme Court held that review of trustees' decisions should be de novo unless the plan documents confer discretion on the trustees to determine benefit eligibility or to construe the terms of the plan. Id. at 113. If the plan allows for such discretion, the "reviewing court may disturb the challenged [decision] only upon showing of procedural or substantive abuse." DeNobel v. Vitro Corp., 885 F.2d 1180, 1186 (4th Cir. 1989).

The 1992 Plan's Trust Agreement does confer upon its Trustees the discretion to determine benefit eligibility, and provides:

> Subject to the provisions of the Coal Industry Retiree Health Benefit Act of 1992, this Trust and the Plan, the Trustees shall have full and exclusive authority and discretion to determine all questions of coverage and eligibility . . . They shall have full discretionary power to construe the provisions of this Agreement and Declaration of Trust and the Plan.

Trust Agreement, Article V, second paragraph.

Following Firestone, the Fourth Circuit construed substantially similar language contained in the governing documents of the UMWA 1974 Pension Plan. There, the Fourth Circuit held that the plan expressly confers upon the Trustees "full and final" authority in determining eligibility for benefits based upon Article VIII A and Article VIII B. (1) of the 1974 Pension Plan. Hale v. United Mine Workers Health & Retirement Funds, 23 F.3d 899, 901 (4th Cir.

1994). See also Lockhart v. UMWA 1974 Pension Trust, 5 F.3d 74, 77 (4th Cir. 1993); Richards v. United Mine Workers Health & Retirement Fund, 895 F.2d 133 (4th Cir. 1990); Boyd v. Trustees of the UMWA Health & Retirement Funds, 873 F.2d 57, 59 (4th Cir. 1989). The language in the Trust Agreement which confers "full and exclusive" authority for eligibility determinations to the Trustees requires the same construction, in light of the Firestone decision, as did the language in the 1974 Pension Plan. Therefore, a court must review the 1992 Plan Trustees' decisions determining eligibility based upon an abuse of discretion standard.

In determining whether the trustees have abused their discretion, a court may not substitute its own judgment for that of the trustees; it may only consider whether the trustees have offered a reasonable interpretation of the disputed evidence. Hale, Lockhart, DeNobel, supra. Courts when analyzing the trustees'interpretation must consider the following factors: whether the interpretation is consistent with the goals of the plan; whether the interpretation renders some language in the plan meaningless or internally inconsistent; whether the interpretation violates the procedural and substantive requirements of ERISA; whether the provisions applied have been applied consistently; and whether the interpretation is contrary to the plain language of the plan. Lockhart at 77 (citing DeNobel).

The Court is of the opinion that the Trustees' interpretation at issue here clearly passes the above test. The standards for determining who is a retiree and when that status is conferred is a decision properly left to those with discretion to administer the Plan, here the Trustees. The Trustees of the 1992 Plan have made that determination in

accordance with the longstanding policies that are both reasonable and in accordance with the law. The eligibility determination made by the 1992 Plan is consistent with Congress' mandate to protect these retirees' health benefits. See generally Holland v. Keenan Trucking Co., 102 F.3d 736, 739 (4th Cir. 1996).

As such, the Trustees' determination that a miner disabled in a mine accident prior to October 1, 1994 but who does not apply for retiree benefits until after October 1, 1994, is retired prior to October 1, 1994, is a reasonable interpretation of the Coal Act requirement that 1992 Plan coverage not be provided to a miner who returned from the coal industry after September 30, 1994, and is, therefore, not an abuse of discretion.

Therefore, in accordance with the above; and since no genuine issue of fact exists, this Court is of the opinion that plaintiffs' motion for partial summary judgment must be granted and that judgment must be entered in favor of the 1992 Plan and against the defendants on all counts of defendants' counterclaim and on defendants sixth, seventh, and thirteenth defenses.

The Clerk is directed to send copies of this Memorandum Opinion to counsel of record herein.

DATED: Sept. 3, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed September 3, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG BRANCH)
ENERGY, INC.,BIRCHFIELD)
MINING, INC.,DAVIDSON)
MINING, INC., and M.A.E. -)
WEST INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

MEMORANDUM OPINION AND ORDER

Pending before the Court is the motion to dismiss the third-party complaint filed by the third-party defendants, the Trustees of the 1993 Benefit Plan.

The claim asserted by the third-party plaintiffs against the 1993 Benefit Plan is predicated on the eligibility determination made by the 1992 Benefit Plan being overturned by this Court. As set forth in this Court's Memorandum Opinion and Judgment Order on this action entered on August , 1997, this Court agrees with the eligibility determination made by the 1992 Benefit Plan. Therefore, under the set of facts adopted by this Court, the third-party complaint does not allege a cause of action against the 1993 Benefit Plan and it must be dismissed. Dismissal of a complaint is warranted if the plaintiff can show no set of facts in-support of the claims which would entitle him to relief. Martin Marietta Corp. v. Int'l. Telecommunications Satellite Org., 991 F.2d 94 (4th Cir. 1992).

Accordingly, it is hereby ORDERED that the motion to dismiss of third-party plaintiff 1993 Benefit Plan is granted. It is further ORDERED that the motion in opposition to the third-party defendants' motion to dismiss filed by the third-party plaintiffs be denied.

The Clerk is directed to send copies of this Memorandum Opinion and Order to counsel of record herein.

DATED: Sept. 3, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed June 16, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION, PANTHER BRANCH COAL COMPANY, dba LONG BRANCH ENERGY, INC., BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATED,
Defendants.

and

BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATION,
Third-Party Plaintiffs,

v.

MICHAEL H. HOLLAND, DONALD E. PIERCE, JR., THOMAS F. CONNORS, and ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third-Party Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court is the motion to dismiss filed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure

of Defendant Pea Ridge Iron Ore Company, Inc. ("Pea Ridge"). Oxide Service Corp. ("Oxide") has also moved to dismiss and to join in Defendant Pea Ridge Iron Ore's motion to dismiss. The defendants move for dismissal asserting lack of jurisdiction over defendants since both companies were divested by former parent company Big River Minerals in November 1996 and, therefore, are not a related person under Section 9701(c) of the Coal Industry Retiree Health Benefits Act of 1992 ("Coal Act"), 26 U.S.C. § 59701, *et seq.*

Plaintiffs (Trustees of the 1992 Benefit Plan of the UMWA) filed this action against defendants seeking declaratory judgment and enforcement of various provisions of the Coal Act. Plaintiffs allege that the Coal Act provides for the maintenance of individual employer health plans sponsored by signatories to certain National Bituminous Coal Wage Agreements and their related persons for various retirees and eligible defendants. The defendants' obligation to provide such health plans is the subject of the civil action.

For purposes of deciding a motion to dismiss the evidence must be interpreted by the Court in the light most favorable to the party opposing the motion. Myron Laboratories, Inc. v. AKZO, N.V., 2 F3d 56 (4th Cir. 1993). In deciding a motion to dismiss the Court must draw all reasonable inferences from the proof and resolve all factual disputes in plaintiff's favor. Myron Laboratories, supra. Where factual statements are proffered and no authority otherwise contradicting the evidence is offered, the pleadings will be construed in the light most favorable to the party opposing the motion. One who moves for judgment has the burden of demonstrating there is no genuine issue of fact. Any doubt as to the existence of such an issue is resolved

against him. International Union, District 50, UMW v. Matthiessen and Hegeler Zinc Co., 291 F. Supp. 578 (N.D. W. Va. 1968). Since the factual allegations contained in the complaint are undisputed by the defendants, those allegations concerning the ownership of Pea Ridge and Oxide must be taken as true for the purpose of determining the motion to dismiss.

Defendant Pea Ridge is or was a Missouri corporation with an office in St. Louis. Defendant Oxide is or was a Delaware corporation with an office in Indianapolis, Indiana. Defendants Birchfield Mining, Davidson Mining, M.A.E. West, Inc. were each signatory to the National Bituminous Coal Wage Agreement of 1988 ("wage agreement"). Pursuant to the wage agreement, Birchfield, Davidson and M.A.E. West were required to maintain an individual employer plan to provide health benefits to their retirees and eligible dependents.

As of July 20, 1992, Birchfield, Davidson and M.A.E. West were wholly owned subsidiaries of Castle Rock Mining Company, a wholly owned subsidiary of Big River Minerals Corporation. Defendants Pinnacle Rock Coal Corp., Pea Ridge Iron Ore, Oxide, Long Branch Energy, and Panther Branch Coal d/b/a Long Branch Energy, are, either directly or indirectly, wholly owned subsidiaries of Big River Minerals Corp. on July 20, 1992.

In their motion to dismiss, Pea Ridge and Oxide assert that this Court lacks jurisdiction over these two defendants since neither conducts business in West Virginia nor does Big River Minerals who owned 100 percent of the outstanding shares of stock of Pea Ridge and Oxide on July 20, 1992.

Both were divested by the parent corporation in November 1996, just prior to plaintiffs' filing of this complaint. Further, Pea Ridge and Oxide assert that there is no jurisdiction over the two defendants just because an alleged related company, Big River Minerals, is doing business in West Virginia.

Plaintiffs contend that defendants' arguments on jurisdiction fail since the Coal Act provides for nationwide service of process and further that Pea Ridge and Oxide are "a related person" to Big River Minerals under the Coal Act and can be made a party defendant herein. The appropriate date for determining the existence of a related person is July 20, 1992.

The Court is of the opinion that Section 9721 of the Coal Act, 26 U.S.C. § 9721, incorporates the nationwide service of process provision of Section 4301(d) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 26 U.S.C. § 1451(d). Section 9721 of the Coal Act, entitled "Civil Enforcement," provides for the application of ERISA, Section 4301, for enforcement of obligations imposed by the Coal Act. Accordingly, the nationwide service of process provision applies herein to Pea Ridge and Oxide. The record indicates that plaintiffs served Pea Ridge's registered agent and that plaintiffs' can achieve personal service over Oxide. Further, when process is served under a federal nationwide service of process provision, as the one found in § 4301(d) of ERISA and applicable herein, the Courts have and continue to apply a national contacts test to determine if personal jurisdiction exists. Driver v. Helms, 577 F.2d 147, 156-57 (1st Cir. 1978), reversed on other grounds sub. nom. Stafford v. Briggs, 444 U.S. 527 (1980);

Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 314 (2d Cir.), cert. denied 454 U.S. 1148 (1981); Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 998-1000 (2d Cir.), cert. denied 423 U.S. 1018 (1975); Horne v. Adolph Coors Co., 684 F.2d 255, 259-60 (3d Cir. 1982); Hogue v. Milodon Engineering, Inc., 736 F.2d 989, 991 (4th Cir. 1984); Bellaire General Hosp. v. Blue Cross Blue Shield of Michigan, 97 F.3d 822, 825-26 (5th Cir. 1996); Federal Trade Commission v. Jim Walter Corp., 651 F.2d 251, 255-56 (5th Cir. 1981); Fitzsimmons v. Barton, 589 F.2d 330, 333-34 (7th Cir. 1979); Securities Investors Protection Corp. v. Vigman, 764 F.2d 1309, 1314-16 (9th Cir. 1985); National Patent Dev. Corp. v. T.J. Smith & Nephew Ltd., 877 F.2d 1003, 1009 (D.C. Cir. 1989).

Under the "national contacts" standard, personal jurisdiction exists if a defendant is present in, or has contacts with, the United States. Driver v. Helms, 577 F.2d 147, 156-57 (1st Cir. 1978), reversed on other grounds sub. nom. Stafford v. Briggs, 444 U.S. 527 (1980); Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 314 (2d Cir.), cert. denied 454 U.S. 1148 (1981); Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 998-1000 (2d Cir.), cert. denied 423 U.S. 1018 (1975); Horne v. Adolph Coors Co., 684 F.2d 255, 259-60 (3d Cir. 1982); Hogue v. Milodon Engineering, Inc., 736 F.2d 989, 991 (4th Cir. 1984); Bellaire General Hosp. v. Blue Cross Blue Shield of Michigan, 97 F.3d 822, 825-26 (5th Cir. 1996); Federal Trade Commission v. Jim Walter Corp., 651 F.2d 251, 255-56 (5th Cir. 1981); Fitzsimmons v. Barton, 589 F.2d 330, 333-34 (7th Cir. 1979); Securities Investors Protection Corp. v. Vigman., 764 F.2d 1309, 1314-16 (9th Cir. 1985); National Patent Dev. Corp. v. T. J. Smith & Nephew Ltd.,

877 F.2d 1003, 1009 (D.C. Cir. 1989). Pea Ridge admits that it is or was a Missouri corporation and Oxide admits it was a subsidiary of American Oxide, a subsidiary of Big River Minerals, a Delaware corporation and that it maintains offices in Indiana. Thus, Pea Ridge's and Oxide's presence in, and contacts with, the United States are clearly sufficient to establish personal jurisdiction in this Court.

Turning focus to defendants' second argument regarding their relation to Big River Minerals, this Court is of the opinion that Defendants Pea Ridge and Oxide are related persons to Big River Minerals under the Coal Act. Pursuant to the Coal Act, "related persons" are jointly and severally liable for certain obligations of signatory coal operators. In this case, Pea Ridge and Oxide are "related persons" to Birchfield Mining, Davidson Mining, and M.A.E. - West, Inc. and are jointly and severally liable for their obligations under Sections 9711 and 9712(d) of the Coal Act.

The term related person is defined in Section 9701(c)(2)(A) of the Coal Act, 26 U.S.C. § 9701 as follows: "a person shall be considered to be a related person to a signatory operator if that person is a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such a signatory operator."

In turn, 26 U.S.C. § 52(a) states that "the term 'controlled group of corporations' has the meaning given to such term in section 1563(a) except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1)." In relevant part, Section 1563(a), 26 U.S.C. § 1563(a), states:

> [T]he term 'controlled group of corporations' means any group of. . .one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or a least 80 percent of the total shares of all classes of stock of each of the corporations, except the common parent, is owned by one or more of the other corporations and the common parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or a least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations. . . .

Under Section 9701(c)(2)(B) of the Coal Act, 26 U.S.C. § 9701(c)(2)(B), the relationships described above are determined "as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business." There is no dispute as to whether Big River remains "in business" within the meaning of the Coal Act. Thus, July 20, 1992, is the appropriate date as of which to determine the control group.

Pea Ridge and Oxide have admitted that on July 20, 1992, Big River owned 100% of the outstanding stock of Pea Ridge and Big River Coal Corporation. Moreover, the 1992 Plan has alleged that Big River Coal Corporation owned, on July 20, 1992, 100% of Castle Rock Mining Company

("Castle Rock") and Castle Rock owned 100% of Birchfield, Davidson and M.A.E. Birchfield, Davidson and M.A.E. were signatory to the 1978, 1984 and 1988 National Bituminous Coal Wage Agreements and are, therefore, "signatory operators" and "last signatory operators" under the Coal Act.

Plainly, Pea Ridge, Oxide, Big River Coal Corporation, Big River, Davidson, Birchfield and M.A.E. are members of a controlled group of corporations on July 20, 1992, because they were a group of "one or more chains of corporations connected through a common parent." Big River was the common corporate parent and the ownership "links" between the members of the group were 100 percent. Thus, Pea Ridge, Oxide, Davidson, Birchfield and M.A.E. were members of a controlled group of corporations on July 20, 1992, and consequently, are "related persons" under the Coal Act.

Under Sections 9711(c) and 9712(d)(4), persons related to last signatory operators are jointly and severally liable to the 1992 Benefit Plan for the obligations of the last signatory operators. The Coal Act flatly contradicts the two defendants' contentions that it "would not under any definition be considered a related person for liability purposes." In the Coal Act, Congress defined "related persons" precisely and, by its plain terms, this definition captures Pea Ridge and Oxide.

It is also clear that any subsequent severing of the controlled group relationship after July 20, 1992, does not relieve any members of that controlled group from their joint and several liability under the Coal Act. First, it makes no sense whatsoever to determine "related person" status as of

July 20, 1992, and then ignore that determination for liability purposes. Second, the cases on pension plan withdrawal liability which have interpreted analogous controlled group liability provisions unequivocally hold that subsequent events that break up a controlled group do not permit a former control group member to escape liability. Board of Trustees of Trucking Employees North Jersey Welfare Fund, Inc. v. Centra, 983 F.2d 495, 501 (3rd Cir. 1992); Teamsters Joint Council No. 83 v. Centra, Inc., 947 F.2d 115, 121 (4th Cir. 1991); Connors v. Brady-Cline Coal Co., 668 F. Supp. 5, 9 (D.C. 1987).

In conclusion, Pea Ridge and Oxide have admitted that they were wholly-owned subsidiaries of Big River on July 20, 1992. Based on this admission, the Court is of the opinion that Pea Ridge and Oxide were members of Big River's control group, which included last signatory operators Birchfield, Davidson and M.A.E., as of that date and, thus, Pea Ridge and Oxide are "related persons" to last signatory operators Birchfield, Davidson and M.A.E. under the Coal Act. The Court further believes that Pea Ridge and Oxide as "related persons" to last signatory operators Birchfield, Davidson and M.A.E., are jointly and severally liable to the 1992 Plan for their failure to provide health benefits to its retirees under Section 9711 of the Coal Act.

Accordingly, it is hereby ORDERED that the motions to dismiss of Defendants Pea Ridge and Oxide are denied.

The Clerk is directed to send copies of this Order to counsel of record herein.

DATED: June 16, 1997

/s/_____
DENNIS R. KNAPP, JUDGE